PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re application of

Martin DE LOYE, et al.

Docket No: Q68486

Appln. No.: 10/084,432

Group Art Unit: 2617

Confirmation No.: 6237

Examiner: Willie J. DANIEL, Jr.

Filed: February 28, 2002

For: RESOURCE MANAGEMENT IN A WIRELESS CORPORATE COMMUNICATION SYSTEM

REPLY BRIEF PURSUANT TO 37 C.F.R. § 41.41

MAIL STOP APPEAL BRIEF - PATENTS
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In accordance with the provisions of 37 C.F.R. § 41.41, Appellant respectfully submits this Reply Brief in response to the Examiner's Answer dated August 21, 2008. Entry of this Reply Brief is respectfully requested.

Table of Contents

STATUS OF CLAIMS

Claims 1-9 constitute all currently pending claims in the present application, all of which are the subject of this appeal.

Claims 1-9 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over U.S. Patent No. 5,999,813 to Lu et al. in view of U.S. Patent No. 6,771,661 to Chawla.

All claims pending in the present application are set forth in their entirety in the previously filed Claims Appendix.

GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

There is only one issue in this appeal: whether claims 1-9 are improperly rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over U.S. Patent No. 5,999,813 to Lu et al. in view of U.S. Patent No. 6,771,661 to Chawla.

For the purposes of this appeal, independent claims 1, 2 and 7 stand together. Additional arguments are presented in particular for dependent claims 3, 6, 8, and 9.

ARGUMENT

Claims 1-9 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over U.S. Patent No. 5,999,813 to Lu et al. ("Lu") in view of U.S. Patent No. 6,771,661 to Chawla ("Chawla"). Appellant traverses this rejection for at least the following reasons.

A. Independent Claim 1

Claim 1 requires a "private branch exchange" which "comprises means for controlling the amount of resources allocated to each of said corporate radio terminals." Claim 1 further requires that a "base station comprises means for sending a message indicating to said corporate radio terminals the amount of resources they are allocated."

In the Examiner's Answer of August 21, 2008, the Examiner seems to assert that Chawla discloses the existence of the RSVP protocol, and that in any request conforming to the RSVP protocol there "must be an acknowledgement indicating the amount of bandwidth is reserved." (Answer at 19, 20.) However, the Examiner provides no evidence in support of the conclusory assertion that the contents of an RSVP acknowledgement must necessarily contain "a message indicating to said corporate radio terminals the amount of resources they are allocated."

Moreover, claim 1 explicitly requires that it is the "private branch exchange" which "comprises means for controlling the amount of resources allocated to each of said corporate radio terminals" The RSVP protocol does not allocate an "amount of resources . . . to each of said corporate radio terminals," but instead allows requests to reserve a specified quality of service for a particular data flow. In other words, while the private branch exchange of claim 1 allocates an amount of resources to each corporate radio terminal, RSVP only allows an

allocation of an amount of resources to one or more data flows, the amount differing between each data flow. Thus, claim 1 allocates resources on a per-terminal basis, but RSVP does so on a per-flow basis. Cisco Systems, Inc., Internetworking Technologies Handbook 48-1 – 48-12 (1992-2008), http://www.cisco.com/en/US/docs/internetworking/technology/handbook/RSVP.html ("[RSVP] is a network-control protocol that enables Internet applications to obtain differing qualities of service (QoS) for their data flows") (emphasis added).

Furthermore, RSVP works by sending a resource reservation request from a requester such as a terminal, the request being forwarded through all intermediate routers to the ultimate destination of the traffic to be sent. RSVP only then allows a determination as to whether the requested resources may be allocated. In contrast, claim 1 requires that the private branch exchange, not the traffic destination, comprises means for controlling the amount of resources allocated. Id.

Finally, as previously pointed out, the Examiner fails to provide sufficient reasoning or motivation for one of ordinary skill in the art to combine Lu and Chawla. Although Appellant has previously pointed out this deficiency as well, the Examiner has declined to provide supplementary evidence or a sufficient motivation to combine these references in the Examiner's Answer.

Accordingly, for at least the reasons set forth above and in the Appeal Brief of June 18, 2008, Appellant respectfully requests that the rejection of claim 1 be withdrawn.

B. Independent Claims 2 and 7

With respect to claims 2 and 7, the Examiner offers only generic and conclusory statements referring to prior arguments. In particular, however, the Examiner's assertion that Appellant has failed to respond to item 4 of the Advisory Action of February 27, 2008 is patently ridiculous. (Answer at 21, § E2 ¶ 3) Under item 4, of that Action, the Examiner attempted to mischaracterize Appellant's statement that "allocation or control of resources does not necessarily require sending a message to terminals" as somehow admitting the possibility that this element is commonly known.

Aside from the fact that a primary argument in Appellant's extensive Appeal Brief of June 18, 2008 was directed to this very element (Appeal Brief of June 18, 2008 at 12-17), the above-quoted statement by Appellant was clearly made within the context of the Examiner's inherency assertion, and Appellant's explanation that an assertion of inherency requires that a reference necessarily contain the matter asserted to be inherent. According to MPEP § 2112[IV], which Appellant has pointed out to the Examiner numerous times, when "relying upon the theory of inherency, the examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied art" (emphasis modified) (citations omitted).

Thus, the above-quoted statement by Appellant simply asserts that sending a message to terminals, as required by claim 1, is not "necessary" or absolutely required for the allocation or control of resources disclosed in the cited references; the statement merely refutes the Examiner's assertion of inherency. Moreover, the further assertions by the Examiner under item

4 of that Action were also extensively addressed in Appellant's Appeal Brief. (Appeal Brief at 15-17.) Appellant there addressed these arguments, which were presented by the Examiner in a previous Office Action, and noted that the Advisory Action of February 27, 2008 did not appear to make any substantive additions to the Examiner's assertions.

Accordingly, for at least the reasons set forth above and in the Appeal Brief of June 18, 2008, Appellant respectfully requests that the rejection of claim 3 be withdrawn.

C. Dependent Claim 3

Claim 3 requires that "said amount of resources [is] allocated to a corporate radio terminal depending on the profile of said corporate radio terminal stored in said database." Although the Examiner previously seemed to assert that this feature was inherent to Chawla, the Examiner now points to specific portions of Chawla as allegedly teaching this feature of claim 3.

Most of the portions of Chawla noted by the Examiner in the Answer refer to the "data communications devices," e.g., PBX 201-1, and are therefore inapposite to the "corporate radio terminal" of claim 3, which instead corresponds to the terminals 210-215 of Chawla. (Answer at 23 ¶ 1, citing Chawla at col. 10, line 65 – col. 11, line 34; col. 11, lines 55-62; col. 12, lines 6-25.)

However, as Appellant also noted in the Appeal Brief of June 18, 2008, Chawla does describe a table 400. For example, as described in col. 13, line 7 – col. 14, line 58 of Chawla, also cited by the Examiner, a "network policy resource allocation table 400 . . . represents the bandwidth requirements described . . . for the computer, voice and facsimile data types." (Chawla at col. 14, lines 35-38.) (emphasis added.) This portion of Chawla further states that

"the resource allocation table 400 is a data structure that can be represented within a data communications device 201 and can indicate to the data communications device 201 what the prescribed reserved amounts of bandwidth are for listed . . . data types." (Chawla at col. 14, lines 47-51.)

Thus, the table 400 of Chawla stores bandwidth requirements according to data types, whereas the "database" of claim 3 stores "user profiles of . . . corporate radio terminals." In fact, Chawla lacks any mention of a "user profile" in association with a "terminal," as required by claim 3. Furthermore, it is clear from the above-quoted portion of Chawla that the table 400 is located within a data communications device 201, and indicates a prescribed reserved amount of bandwidth to that self-same data communications device 201. In contrast, claim 3 requires that the "[p]rivate branch exchange" comprises the "database", but that the database stores profiles of the "corporate radio terminals," which are clearly distinct from the private branch exchange.

Accordingly, for at least the reasons set forth above and in the Appeal Brief of June 18, 2008, Appellant respectfully requests that the rejection of claim 3 be withdrawn.

D. Dependent Claims 6, 8, and 9

In the Appeal Brief of June 18, 2008, Appellant asserted that the outstanding rejection with respect to the feature "automatically and dynamically adjusts the amount of bandwidth for communication sessions according to situations such as times or events" is unsupported by Lu or Chawla, alone or in combination. The Examiner has declined to provide any evidence or argumentation in support of this contention in the Examiner's Answer, and instead provides only

conclusory assertions that Lu and Chawla "clearly discloses the claimed feature(s)." (Answer at 23, § G2 ¶ 2.)

Appellant reiterates that no teaching or suggestion of the above-quoted feature of claims 6, 8, and 9 is evident in either Lu or Chawla. Appellant, therefore, respectfully submits that neither reference teaches or suggests "automatically and dynamically" adjusting the amount of bandwidth.

Accordingly, for at least the reasons set forth above and in the Appeal Brief of June 18, 2008, Appellant respectfully requests that the rejection of dependent claims 6, 8, and 9 be withdrawn.

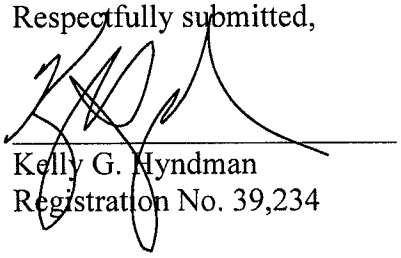
CONCLUSION

For the above reasons as well as the reasons set forth in the Appeal Brief of June 18, 2008, Appellant respectfully requests that the Board reverse the Examiner's rejections of all claims on Appeal. An early and favorable decision on the merits of this Appeal is respectfully requested.

This Reply Brief is being filed via the USPTO Electronic Filing System (EFS). Any fee due under 37 C.F.R. §41.37(a) and 37 U.S.C. § 1.17(c) is being paid via the USPTO Electronic Filing System (EFS).

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,



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